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From:

Sent: Monday, July 18, 2011 3:34:47 PM

To:

Cc:

Subject: FW: Request for Guidance

We have reviewed the facts in your request for advice. Briefly, we understand that the executor of the taxpayer's estate contacted the _____ requesting help in obtaining a refund of levy payments that posted to the taxpayer's account for taxable years in which no return was ever filed and no assessment ever made. The levy payments were received after the tax liability for which the levy was issued had been satisfied. _____ assisted the executor in filing a claim for refund with respect to these amounts, but the Campus Service Center denied the claim. _____ has now requested Counsel's advice.

The Service applied improperly retained levy payments to taxable years for which no returns were ever filed nor assessments ever made. Because the taxpayer never filed income tax returns for these years, however, the expiration date for assessment never began. In addition, no claim for refund was ever made by the taxpayer for those amounts. The executor of the estate is now seeking a refund of these payments.

Under section 6511(a), if no return was filed by the taxpayer, a claim for refund must be filed within two years from the time the tax was paid. Accordingly, the only amounts now potentially eligible for refund would be amounts either paid by the taxpayer or credited by the Service during the two-year period preceding the date the executor filed a claim for refund with the Campus Service Center.

Any suggestion that the Service attempt to revive the expired period of limitation for filing a claim for refund, such as preparing a substitute for return in order to make assessments to which credits could be applied and then later refunded, or crediting amounts from barred years in order to "restart" the period of limitation for which to file a claim, is fruitless. Section 6514 clearly provides that any credit resulting from an action by the Service in an attempt to create an "overpayment" is void.

These amounts were arguably eligible for return under section 6324(d) and Treas. Reg. 301.6343-3(c)(4). Unfortunately, the time period for filing a claim for return of such amounts, within nine months from the date of the improper levy, has long expired. Thus, section 6343 provides no assistance in returning any amounts to the executor.

This is, simply put, a situation where the taxpayer, never having filed returns for the tax years at issue, needed to file returns within two years of when the various payments

were credited in order to establish his right to refunds. Having failed to do so, refunds are now barred.